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V. EVIDENTIARY HEARINGS—
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United States Senate

Impeachment Trial Committee

Impeachment of Judge G. Thomas Porteous, Jr., U.S. District Judge For the Eastern District of Louisiana

Volume I

Monday, September 13, 2010

Dirksen Senate Office Building

Washington, D.C.

APPEARANCES:

SENATE IMPEACHMENT TRIAL COMMITTEE:

Senator Claire McCaskill (D-MO) - Chairman

Senator Orrin Hatch (R-UT) - Vice Chairman

Senator John Barrasso (R-WY)

Senator James DeMint (R-SC)

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Senator Jeanne Shaheen (D-NH)

Senator Thomas Udall (D-NM)

Senator Sheldon Whitehouse (D-RI)

Senator Roger Wicker (R-MS)

SENATE LEGAL COUNSEL:

Morgan Frankel, Senate Legal Counsel

Pat Bryan, Senate Legal Counsel

Thomas Caballero, Assistant Senate Legal Counsel

Grant Vinik, Assistant Senate Legal Counsel

-- continued --

APPEARANCES (Continued):

HOUSE OF REPRESENTATIVES MANAGERS:

Representative Adam B. Schiff (D-CA)

Representative Robert W. Goodlatte (R-VA)

Representative Zoe Lofgren (D-CA)

Representative Henry C. Johnson (D-GA)

Representative James Sensenbrenner, Jr. (R-WI)

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Mark Dubester, Special Impeachment Counsel

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RESPONDENT: Judge G. Thomas Porteous, Jr.

RESPONDENT'S COUNSEL:

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Daniel O'Connor, Esq.

Brian Walsh, Esq.

Daniel Schwartz, Esq.

P R O C E E D I N G S (8:08 a.m.)

CHAIRMAN MC CASKILL: Good morning.

The evidentiary proceedings of the Senate Impeachment Trial Committee on the articles against Judge G. Thomas Porteous, Jr. of the Eastern District of Louisiana will now come to order.

With the adoption of Senate Resolution 458 on March 17, 2010, this committee was appointed to perform the duties and exercise the powers provided for in Rule 11 of the Rules of Procedure and Practice in the Senate while sitting in impeachment trials.

Rule 11 requires this committee to receive evidence and to take testimony on the four articles of impeachment which were presented to the Senate by the House of Representatives.

Following extensive pretrial proceedings, we are here today to begin receiving evidence.

At the conclusion of these evidentiary proceedings, the committee shall, as mandated by Rule 11 and by Senate Resolution 458, report to the full Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before this committee. And, in addition, statement of facts that are uncontested and a

summary of the evidence that the parties have introduced on contested issues of fact.

These proceedings may be viewed live in each Senate office, on television or on the committee's Web site at www.sitc.senate.gov.

The proceedings are also being recorded so that each Senator who is not on the committee may have an opportunity at any time to view the testimony of the witnesses as well as read the transcripts of their testimony.

Under Senate Impeachment Rule 11, the full Senate retains the power to determine the competency, relevancy and materiality of the evidence that the committee will report to it. The Senate also retains the power to send for any witness to testify in open Senate or, indeed, to order that the entire trial be conducted in open Senate.

Regarding the House request to waive Rule 22 and allow two persons to present its opening statement, that request is hereby granted and the rule is waived.

Rule 19 requiring that senators wishing to ask a question put the question in writing and through the presiding officer was previously waived.

Members will be permitted to ask questions directly of the witnesses once that witness has been cross-examined.

And I would now defer to both sides of the trial to begin their opening statements.

MR. SCHIFF: Madam Chair, Senators, I'd like to begin by introducing the team of Representatives from the House that will be presenting the case. Of course, I'm Adam Schiff. I am joined by my colleague --

CHAIRMAN MC CASKILL: Excuse me, Congressman, I think you need to turn the microphone on.

MR. SCHIFF: Thank you, Madam Chair. Much better.

I'm joined by my colleague Bob Goodlatte from Virginia. We'll be joined during the trial by our colleagues Hank Johnson, Jim Sensenbrenner and Zoe Lofgren, also assisted by some very able counsel, Alan Baron, Mark Dubester, Harry Damelin and Kirsten Konar.

At the outset, the House recognizes what an extraordinary proceeding this is and how seldom an impeachment is undertaken. I think this is a reflection of several things, not the least of which

the caliber of men and women who are nominated for the federal bench, vast majority of which who have acquitted themselves of great distinction, and not given cause for their removal from office.

I think it's also a tribute to the confirmation process that does a good job in vetting out those who are not suitable for the bench. And I also think it's a reflection of how infrequently the House believes that this extraordinary remedy is required.

I won't spend much time this morning in discussing the standard for impeachment, the content of crimes and misdemeanors, there will be time for that later.

Other than that, I think the members of this committee understand that standard probably better than I or anyone else could articulate.

But I will share at least, in my view, one of the formulations I think House and Senate have arrived on in considering judicial impeachments, and that is that a judge has committed a serious violation of the public trust, that in the phraseology of Governor Morris, one of the framers, that the judge has so misdemeaned himself by violating the public trust that it necessitates his

removal from the bench.

And I will also say in the unanimous view of the House of Representatives, the conduct of Judge Porteous was so unethical, so deplorable and inimical to the public trust that he cannot be allowed to remain on the bench.

What was that conduct? I'd like to give you a brief overview of the facts of the case before I turn it over to my colleague, Mr. Goodlatte, to go through the evidence in more detail. But before I do, it's worth pointing out that the vast majority of the facts, the underlying conduct in this case, is not disputed.

The central conduct in this case is simply not contested. And that conduct involves four areas. It involves the judge's relationship with two attorneys, Jake Amato and Bob Creely, it involves his corrupt relationship with the bail bonds company run by the Marcottes, it involves the concealment of the nature of his relationship with these attorneys and this bail bonds company during his own confirmation, and it involves his numerous false statements, representations and violation of the bankruptcy court order during his bankruptcy case.

Let me start first with the lawyers Amato and Creely. The evidence will show that he had known these lawyers for a long time, that he had in fact been a partner of theirs in their law practice before he was appointed to the state bench, that at some point while he was on the state bench, whether because of his expenses in the course of his family occasions, weddings or whatnot, whether it was because of his gambling or his drinking or his taste for expensive lunches, he started asking for cash from one of the attorneys, Creely.

In the beginning it was small amounts, $50, $100, whatever Bob Creely had on him. But over time he became to ask for more cash, $500, $1000. And at some point, Bob Creely got tired of being hit on by the judge for cash, and he told the judge it had to stop. The judge had to change his lifestyle or do whatever was necessary, but the cash had to stop.

And after they had this conversation, the judge started sending curatorships to the law firm of Creely and Amato. Curatorships are essentially small administrative cases, often when there's an absent party and it's necessary for somebody to take an ad out in the paper or do other administrative

tasks for the court.

These cases weren't very much, $175 or $200. Amato and Creely will testify they didn't even want these cases, didn't ask for them, didn't want them. But once the judge started sending these curators to the firm of Amato and Creely, he started again to hit them up for cash. He would call and he would want some of the curator money, and the evidence will show that they started to give him basically 50 percent of the curator money.

The evidence will also show that they continued to give him curator money, and they would both take a draw from the firm, they would each basically get $1000 as a draw from the firm. They would then turn that into cash and give the cash to Judge Porteous.

This went on for a period of time, until Judge Porteous was nominated for the federal bench. Once he was appointed to the federal bench, he was no longer in a position to send curators to the firm of Amato and Creely. When the curatorship stopped, the cash also stopped.

Now, that cash stopped and the request for cash stopped with the end of the curators, when he was appointed to the federal bench. The requests

for cash stopped until a certain point. And that point came when Judge Porteous was assigned a multi, multimillion dollar piece of litigation called Liljeberg versus Lifemark, involving the fight over a hospital contract, pharmacy within the hospital, a very complex case that's not necessary to go into great detail about.

But this case had been going on for years. Six weeks before the trial, Liljeberg brings in, among others, two new lawyers, and one of them is Jake Amato, the other is a lawyer named Levenson.

Opposing counsel, a gentleman named Joe Mole, became concerned with the late addition six weeks before trial in this multiyear, very complex multimillion dollar, perhaps as much, the evidence will show, as worth $200 million, very concerned with the late addition of these lawyers, so he did some due diligence, contacted people that he knew that understood the bar in New Orleans.

What he was told really alarmed him, that basically the thing that these two attorneys had in common, Amato and Levenson, was they were close friends, basically cronies of the judge. They were told in no uncertain terms, Mr. Mole was told, not by people who wanted to identify themselves, not by

people who would speak publicly, but the fix was in, that they better make a good record for themselves on appeal because they were going to lose this case.

Now, this put Mr. Mole in a very difficult position, because the case was a bench trial. There was going to be no jury. Judge Porteous was going to decide the facts, he was going to decide the law, he was going to write the order. And Mr. Mole didn't have hard evidence that he could cite to. Most of what he was told -- basically he was told in a way that he could not use in court.

But he did know that they had lunch together, although he did not know how frequently, and he was able to find through court records that, he believed, that Mr. Amato or Mr. Levenson had given a contribution to Judge Porteous's campaign.

And these were the only facts he really could cite to, their friendship, this campaign contribution, having lunch together and his motion to recuse.

But he felt he had no choice. He had to try and ask the judge to remove from the case. So he files the motion. The judge makes it quite clear during the recusal hearing -- and we will share with you the transcript of that recusal hearing because

it's one of the most illuminating pieces of evidence in the case.

The judge makes it clear he understands the ethical standards, he understands when he has to take himself off a case. He goes through that with counsel.

And then he chides Mr. Mole for suggesting that he had gotten a campaign contribution from Mr. Amato and Mr. Levenson. He says, I never had a campaign. The contribution you're talking about was a contribution to all the judges, for all their campaigns, a program that was called Justice for All, attributed to all the judges' reelection. That was the only money he got from these lawyers.

Now, this, of course, we know was a quite deliberate misrepresentation because, in fact, he had gotten thousands and thousands of dollars for these curatorships from Mr. Amato and Mr. Creely, none of which he discloses.

All he does is chide the attorney for not doing his homework. Of course, if Mr. Mole had really done the homework, if he had been able to do the homework he needed and found out about all this cash the judge had received, the recusal motion on appeal, because he later appeals, and of course the

Court of Appeals doesn't know the information and denies it, the appeal would have been successful, the judge would have been forced to recuse himself.

But the judge doesn't. He rules against the motion. The appeal is denied. The case goes to trial.

After the case goes to trial, Judge Porteous takes the case under submission. This is worth an enormous amount to the law firm of Amato and Creely. They have a commission arrangement, contingency case. They don't make a penny unless they win this case, and if they do win, Mr. Amato will testify, they stand to earn somewhere between half million to a million dollars. He's taken no other case in two years as Mr. Amato's work on this case, was worth an awful lot to his firm.

Case is under submission for three years. While it's under submission, they continue having their lunches together, the evidence will show Creely or Amato had -- Levenson had lunch with the judge probably hundreds of times over the years, expensive restaurants, lots of liquor.

They continued having the lunches and the wining and dining. But more than that, they pay for parties for the judge, they pay for other expenses

for the judge.

And on one very pivotal weekend, Mr. Amato goes fishing with the judge, and they're on the fishing boat, and the judge says -- breaks down, and says I need money for my son's wedding, you've got to help me, I need money for my son's wedding, can you give me 2000, $3000, can you get me that cash? Can you give it to me? Can you find somebody to give it to me? I need the money.

And Mr. Amato will testify he made the worst decision of his life. Mindful of the fact that he had this very important litigation in his courtroom, he gives him the money. Can't remember whether he gave it to him personally or had his -- or the judge sent his secretary over to pick it up, but gives him 2000, $2500 in cash in an envelope.

Now, during the recusal hearing, the judge made a point of saying I know the standard that I'm to be held to. It's my responsibility as a judge to disclose if there's something that the attorney should ask me to remove myself from the case.

Does Judge Porteous disclose at any point during the case while it's under submission that he has solicited cash from one of the lawyers? Does he tell other counsel about it? Of course not.

Ultimately, the judge rules and rules in favor of Mr. Amato's client. It's a huge victory for Mr. Amato's client, writes a lengthy opinion. Mr. Mole as he knew he would have to appeal the opinion, and in large part, the Court of Appeals reverses. And not only reverses, but in one of the more scathing opinions you'll ever read, accuses Judge Porteous of making up remedies and arguments out of whole cloth, baseless -- a baseless decision, is essentially what the Court of Appeals views what Judge Porteous has written.

The evidence will also show that at the same time that this illicit relationship is going on with Amato and Creely, it's not the only relationship of its kind going on in the Gretna courthouse, in the state courthouse.

Judge Porteous also has a relationship with a bail bonds company run by Louis Marcotte. With respect to the Marcottes, Louis and his sister Lori, the evidence will show a very similar pattern, the Marcottes taking the judge out to probably over the years dozens if not hundreds of meals at expensive places, buying him liquor, more than that, doing repairs on the judge's car, doing repairs at the judge's home.

And for his part, the evidence will show Judge Porteous set bonds in a manner that would maximize profits to Louis Marcotte and his company. One would hope that a judge's priority in setting bond would be to assure defendant's appearance in court.

But the evidence will show here that the Marcottes asked for bonds that would be set at amounts that would benefit him, Mr. Marcotte, and that Judge Porteous was more than willing to comply. And the judge did more for Louis Marcotte. On two separate occasions, he was asked by Mr. Marcotte to expunge the convictions of employees of the bail bonds business who could no longer work, could no longer be licensed to work in the bail bonds business because of their convictions.

So Louis Marcotte goes to the judge and says will you expunge the conviction first of a guy named Jeff Duhon, and the judge does it, and later of another bail bonds employees, Aubry Wallace, and the judge expunges that conviction too.

Interestingly enough, these are two of the bail bonds employees who were doing the work for the judge, doing the car repairs and doing the home repairs.

And when the judge takes the federal bench and can no longer set bonds to advantage Louis Marcotte, Judge Porteous helps to recruit a new judge to take his place with the Marcottes, a state judge, a new state judge named Bodenheimer, who will later go to jail after pleading guilty to a charge almost identical to the conduct here.

With respect to the confirmation process, the evidence will show that Judge Porteous knowingly failed to disclose the corrupt nature of these relationships to the FBI and to the Senate.

How do we know that the failure to disclose was knowing? How, apart from the obvious fact that he was certainly aware of the cash he got from Creely and Amato, he was aware of the curatorships that were the basis of that cash, he was aware of the lunches and the parties they paid for, he was aware of the drinking and the gambling? How, apart from the obvious, do we know that Judge Porteous quite deliberately kept this from the Senate?

Well, he tells us so. He tells us and he shows us so. Let me give just one example of how he does that.

Louis Marcotte, when he asks him to

expunge one of these convictions, the second of the convictions, Aubrey Wallace, he will testify that when he asks Judge Porteous to expunge this conviction, Judge Porteous says I will do it, but not right now. I won't do this until after my Senate confirmation. I'm not blowing a lifetime appointment to the bench to do this for you.

And that's exactly what happens. He waits until after his Senate confirmation, and just before he's sworn in to expunge the conviction of Aubry Wallace.

Now, why does he do it precisely then? Obviously he doesn't want to do it before the confirmation because he knows this would materially affect his confirmation if he's expunging convictions for this bail bonds company.

But why, just before he's sworn in? Well, he also knows that the moment he's sworn into the federal bench, he's no longer in a position to expunge any conviction. He can only do that as a state judge, so it has to be exactly then, and in fact the evidence will show that's exactly when he expunges the conviction.

Now, during the confirmation, Judge Porteous is asked by the Senate, is he aware of any

unfavorable information that may affect his nomination. And he answers in his written statement under penalty of perjury, "to the best of my knowledge, I do not know of any unfavorable information that may affect my nomination."

Now, defense might object, well, how could he disclose the expungement of Aubry Wallace's conviction when he so shrewdly waited until after the confirmation to do it. And the answer is he had already done it with respect to Jeff Duhon. This was only the second time he did it.

But, of course, he also knew about all the cash, knew about all the other expenses and failed to disclose that. And I think there's no question that would have materially not only affected his confirmation but ended his confirmation.

With respect to the bankruptcy, the evidence will show a similar effort to conceal the truth. He begins the bankruptcy process by filing the petition in a phony name, not Porteous, but he picks a name Ortous, he files the petition in the name Ortous.

He opens a post office box so that this first petition won't be associated with him publicly. Why does he do this? Why file under

phony name? Perhaps it's to avoid certain creditors or perhaps it's to avoid having the casinos read about his bankruptcy and decline to extend credit markers to him in the future, or perhaps, as the defense will suggest, it's simply to avoid public embarrassment.

But if a man will go to the extreme length of filing a bankruptcy petition in a false name and certify under penalty of perjury that that name is, in fact, his real name, if he will go to the further length of taking a post office box to conceal that it is his true identity, will he not conceal other information from the Senate in order to obtain a lifetime appointment to the bench?

The evidence will show that he would and that he, in fact, did.

There are numerous other false statements in the bankruptcy proceeding, which we will chronicle later, but Judge Porteous repeatedly violates the bankruptcy judge's order not to incur new debt when he goes to casinos again and again, filling out credit applications, taking out markers and borrowing from the casino to gamble.

Now, as I mentioned, none of these facts are seriously contested. In fact, Judge Porteous

admits to most of them in the 5th Circuit. He is asked about the curator moneys, and he admits sending the curators and he admits calling them and getting cash back.

He will not call it a kickback, but Judge Porteous does not deny getting the cash after sending the curatorships.

When he is asked how much money did he get from Creely and Amato during the 5th Circuit proceedings, his answer, I have no earthly idea. I have no idea.

Not I didn't get the money, not I don't know what you're talking about, but in terms of how much, I have no idea. He got cash so often after such a prolonged period of time, he has no idea exactly how much he got from them.

Does he admit getting the 2- to 3000 in cash after soliciting it during the pendency of this case, the Liljeberg case, in an envelope? Yes, he admits that too in the 5th Circuit.

He takes issue, strangely enough, with the envelope. He can't remember whether it was a bank envelope or a regular envelope, but he doesn't deny getting an envelope with cash during the pendency of this multimillion dollar litigation. He doesn't

remember whether he got it personally or whether he sent his federal secretary to pick up the cash for him but he doesn't deny getting cash.

He admits not disclosing curator money during recusal hearing, he admits not paying taxes on the cash income he got from Amato and Creely. He admits filing his judicial disclosure forms, federal disclosure forms, and claiming that he had about $30,000 in credit card debt when, in fact, he had over $180,000 worth of credit card debt.

He admits filing his bankruptcy under a false name, saying only it was his lawyer's idea. He admits filling out credit applications for casinos and incurring more debt in the form of markers with those casinos when the bankruptcy order prohibited him from doing so.

None of this he denies. Not the lunches, not the parties, not the favors, not the cash, not the false statements, not the expungements, not the split bonds, not the false name. None of this do we expect he has or will deny.

So if the facts are largely uncontested, what is the issue here. As I will discuss briefly, after Mr. Goodlatte goes through the evidence of these facts in more detail, the issue in this case

is largely this. Judge Porteous doesn't believe any of this conduct is wrong. He doesn't believe any of it is unethical or immoral. In his view, it is at best the appearance of impropriety.

As the defense states in its statement of the case, the conduct alleged here is, "a variety of acts that constitute, at most, the appearance of impropriety."

It is the unanimous view of the House of Representatives that Judge Porteous's conduct was not only wrong but so violative of the public trust that he cannot be allowed to remain on the bench without making a mockery of the court system.

I would now like to turn it over to my colleague, Bob Goodlatte, to go through the evidence in more detail.

MR. GOODLATTE: Thank you, Mr. Schiff.

Chairman McCaskill, Vice Chairman Hatch, members of the committee, now let me turn to the facts that we shall prove in the case in more detail.

Judge Porteous was born in December 1946, and he will be 64 this December. In 1971, he graduated from LSU law school, and he was a partner with Jacob Amato, from whom we will hear later

today, between 1973 and 1974.

Robert Creely, who you will also hear from later today, also practiced at that law firm. From October 1973 to August 1984, Judge Porteous also served as an assistant district attorney in Jefferson Parish, Louisiana.

In August 1984 Judge Porteous was elected and served as a State District Court judge on the 24th Judicial District Court for Jefferson Parish, Louisiana, where he served as a state judge from August 1984 to October 28, 1994.

While a state judge, Amato and Creely regularly and frequently took him to lunch and provided and paid for other entertainment for Judge Porteous. Judge Porteous virtually never paid for any lunches he attended with Creely or Amato.

Let me first start off by talking about Judge Porteous's curatorship scheme with attorneys Creely and Amato.

As Mr. Schiff stated, at some point after he became a state judge, Judge Porteous began to request money from Robert Creely. The evidence will show that Judge Porteous claimed that he needed money for personal reasons, such as tuition, car repairs or home repairs. Creely would give him the

moneys as requested.

Over time, as Judge Porteous's requests for money persisted and the amounts he sought increased, Creely came to resent and resist them, to the point that Creely would avoid Judge Porteous's phone calls. Creely went so far as to tell Judge Porteous that he felt he was being taken advantage of.

This committee has ruled that the transcripts from the 5th Circuit and the House hearings are admissible, so I will quote here from what Creely previously testified before the 5th Circuit.

"I don't recall if I specifically told him that it was because of his lifestyle, but I told him that I -- we could not continue giving him money, I couldn't continue giving him money."

In light of Creely's resistance, Judge Porteous came up with the following scheme. Judge Porteous used his judicial power to assign Creely curatorships. These are appointments whereby Creely would represent a missing party in a case, such as a case to clear title on a foreclosure, for which Creely would receive a set fee of approximately $200 from the court.

And after Creely was paid for those curatorships, Judge Porteous requested from Creely money constituting some portion of the curatorship fees. Again, Creely testified in the 5th Circuit,

"Question: Did Judge Porteous make a request of you after sending you curatorships for a portion of the fees that you were being paid by the court?

"Answer: Yes, sir.

"Question: And how did that -- how did he do that?

"Answer: I don't recall how it came about, but it came about. And he got -- and I can't -- I can't tell you that he got all of the curator fees that we generated, but he got a good portion of the fees that we generated from the curators."

Creely told his partner, Amato, that Judge Porteous was asking for money from the curatorships. Here's how Amato described this in his deposition of August 2 of this year, in response to questioning by Judge Porteous's attorney.

"Question: Was it your understanding that there was a connection between the money that was the cash that was given to Judge Porteous and the

curatorships?

"Answer: At some point in time, yes.

"Question: And how did you reach that understanding?

"Answer: Bob Creely came in my office one day, told me that Porteous was sending curatorships and he wanted us to, you know, give him some money back. And I told him, this is going to wind up bad."

And as you can see, Mr. Amato could not have been more prescient.

Let me pause here. The evidence here is not simply the testimony of Creely and Amato. Judge Porteous himself has admitted essential aspects of this sequence of events leading to and including his actions regarding the curatorships. For example, in his testimony under oath to the 5th Circuit, Judge Porteous confirmed that Mr. Creely refused to pay him money before the curatorship started.

"Answer: He may have said I needed to get my finances under control, yeah."

Similarly, Judge Porteous confirmed that during the time he sent curatorships over to the Amato and Creely firm, he would receive money back from them.

"Question: And after receiving curatorships, Mr. -- Messrs. Creely and/or Amato and/or their law firm would give you money; correct?

"Answer: Occasionally.

"Question: During the time you were giving Creely and Amato and the law firm curatorships and you were getting cash back, was that cash you received a kickback for the curatorship, in your mind?

"Answer: No, sir."

Though Judge Porteous disputes whether the arrangement should be characterized as a kickback, he does not dispute the fundamental premise of the arrangement that was then in place, that there was a time that he was giving, quote, Creely and Amato and their law firm curatorships and was getting cash back.

Thus, Creely and Amato acceded to Judge Porteous's requests and gave him cash that was funded by the curatorships. Creely and Amato took equal draws from the firm to come up with the cash to give Judge Porteous in response to his demands.

Here are examples of orders that Judge Porteous signed, assigning a curatorship to Creely, orders that Judge Porteous signed in his judicial

capacity in order to enrich himself.

During the 1988 to 1994 time periods, the house has identified approximately 200 curatorships that Judge Porteous assigned Creely, amounting to fees of close to $40,000 to the firm. Creely and Amato have each estimated that they collectively gave Judge Porteous approximately $20,000 or $10,000 each from the curatorship proceeds.

And as to money amounts he received, Judge Porteous had testified.

"Question: Judge Porteous, over the years, how much cash have you received from Jake Amato and Bob Creely or their law firm?

"Answer: I have no earthly idea.

"Question: It could have been $10,000 or more, isn't that right?

"Answer: Again, you're asking me to speculate. I have no idea, is all I can tell you."

Though the money came directly from Creely, the evidence will show that Judge Porteous well understood that the money was 50/50 from Amato as well. The evidence will be clear that Judge Porteous spent time with both men and understood they had a classic partnership relationship.

However, after Judge Porteous became a

federal judge in 1994, his ability to assign Creely the curatorships came to an end and thus, his cash requests came to an end for the time being.

We believe you will conclude that the fact that Judge Porteous stopped making cash requests at the same time he stopped assigning curatorships is powerful evidence that Judge Porteous understood that those two events would be inextricably interwoven.

Now let me turn to Judge Porteous's handling of the Liljeberg case in federal court, a case where Amato was the attorney for one of the parties.

In early 1996, Judge Porteous, now a federal judge, was assigned a complicated civil case involving the dispute between a hospital, Lifemark, and a company that was running a pharmacy at the hospital, known collectively as the Liljeberg.

Trial was set for early November 1996, and just six weeks prior to the date for trial, in late September 1996, the Liljeberg hired Mr. Amato and the law firm of Amato and Creely and another of Porteous's very close friends, Leonard Levenson, to represent them at trial.

As Mr. Schiff noted, Lifemark's counsel

filed a motion to recuse Judge Porteous. Lifemark argued that the timing of known close friends of Judge Porteous entering this complex case raised suspicions about the integrity of the process. Lifemark's attorney, Joseph Mole, had no idea that Amato had, in fact, in partnership with Creely, given Judge Porteous close to $20,000 in cash.

In October 1996, Judge Porteous conducted a hearing on Lifemark's recusal motion. It is worth going through what happens at that recusal hearing in a little bit of detail.

At the recusal hearing, Judge Porteous described his relationship with Amato and Levenson as follows: "If anyone wants to decide whether I'm a friend with Mr. Amato or Mr. Levenson, I will put that to rest. The answer is affirmative, yes. Mr. Amato and I practiced law together probably 20-plus years ago."

Judge Porteous further stated, "yes, Mr. Amato and Mr. Levenson are friends of mine. Have I ever been to either one of them's house? The answer is a definitive no. Have I gone along to lunch with them? The answer is a definitive yes. Have I been going to lunch with all the members of the bar? The answer is yes."

In short, at the hearing Judge Porteous portrayed his relationship with Amato as simply the same sort of unexceptional relationship that he would have had with any member of the bar, limited to having, quote, gone to lunch with him.

Even that is misleading, because the evidence will show that Judge Porteous had, in fact, accepted hundreds of meals at expensive restaurants from Amato without reciprocating.

More significantly, in describing his relationship with Amato, Judge Porteous makes no mention whatsoever of what really is the issue, that is, that he has received thousands of dollars in cash from Amato's law firm, money that he knows comes from Amato as well as Creely.

Mr. Mole, at a great disadvantage, says, "the public perception is that they do dine with you, travel with you, they have contributed to your campaigns."

And Judge Porteous pounces on this. "Well, luckily, I didn't have any campaigns, so I'm interested to find out how did you know that? I never had any campaigns, Counsel. I have never had an opponent. The first time I ran, 1984, I think, is the only time they gave me money."

Judge Porteous goes on to challenge Mole about the suggestion that Amato and Levenson had given him campaign contributions, saying that Mole "should have done his homework better." He makes the self-serving comment in which he promises to notify counsel if he has any question that he should recuse himself and concludes, "I don't think a well-informed individual can question my impartiality in this case."

Well, in effect, what you have here is Judge Porteous and Amato, who know the facts, just not disclosing it, completely misleading and disguising the nature of the actual relationship.

Amato knows this is not right. Here's what Amato described the deception in the courtroom in response to questioning by Mr. Schiff at his Senate deposition.

"Question: And he, in fact, told the other attorneys they should have done their homework better because this was a contribution to a general judge's fund.

"Answer: That's correct. That's the short story.

"Question: And while he was making this show for the other counsel, that they should have

done their homework better, he didn't tell them anything about the approximately $20,000 in curator fees that you and your partner kicked back to him, did he?

"Answer: No, he didn't tell them anything about the curatorships.

"Question: Do you think that was misleading, Mr. Amato, for him to pound his chest and say, I never got any campaign contributions, but failed to tell them he got about $20,000 in cash under the table?

"Answer: Yes.

"Question: So you don't feel he was being honest during that hearing, do you?

"Answer: I don't think he was being honest."

In the summer of 1997, Judge Porteous presided over the Liljeberg trial and took the case under advisement. He did not issue his opinion until April of 2000.

The evidence will show that in May of 1999, while Judge Porteous had the Liljeberg case under advisement, Judge Porteous invited Creely, Amato's partner, to Las Vegas for Judge Porteous's son's bachelor party prior to his wedding.

On that trip, Creely paid for Judge Porteous's hotel room, contributed several hundred dollars to the bachelor party dinner and paid for other entertainment for Judge Porteous.

Indeed, Judge Porteous admitted in his 5th Circuit testimony that Creely made those payments for him.

In June of 1999, also while still having the case under advisement, Judge Porteous went on a fishing trip with Amato and told him that his son's wedding expenses were more than anticipated and requested that Amato give him cash.

In response to that request, Amato and Creely gave Porteous approximately $2000.

Just pause for a moment. Here we have a federal judge, while having a nonjury case under advisement, asking one of the attorneys for cash.

Like much of the other evidence that we shall introduce, the fact that Judge Porteous solicited and received money from Amato in 1999 in connection with his son's wedding, and while the Liljeberg case was pending, is not really contested.

Here's how Judge Porteous testified.

"Question: Do you recall in 1999, in the summer, May, June, receiving $2000 from them?

"Answer: I've read Mr. Amato's grand jury testimony. It says we were fishing and I made some representation that I was having difficulties and that he loaned me some money or gave me some money.

"Question: Whether or not you recall asking Mr. Amato for money during this fishing trip, do you recall getting an envelope with $2000 shortly thereafter?

"Answer: Yeah, something seems to suggest that there may have been an envelope. I don't remember the size of an envelope, how I got the envelope or anything about it.

"Question: Wait a second. Is it the nature of the envelope you're disputing?

"Answer: No, money was received in an envelope.

"Question: And had cash in it?

"Answer: Yes, sir.

"Question: And it was from Creely and/or --

"Answer: Amato.

"Question: Amato?

"Answer: Yes.

"Question: And it was used to pay for your son's wedding?

"Answer: To help defray the cost, yeah.

"Question: And would you dispute that the amount was $2000?

"Answer: I don't have any basis to dispute it."

In addition, in the fall of 1999, while Judge Porteous still had the Liljeberg case under advisement, Creely and Amato paid over $1000 for a party in honor of Judge Porteous's fifth year on the federal bench.

In April 2000, Judge Porteous issued his opinion in the Liljeberg case, ruling for the Liljebergs on all major issues. Lifemark appealed Judge Porteous's opinion, and the 5th Circuit reversed Judge Porteous in scathing terms, describing it variously as, quote, inexplicable, a chimera, constructed entirely out of whole cloth, bordering on the nonsensical and absurd.

Thus, Article I charges a pattern of course of conduct in connection with Judge Porteous's handling of the Liljeberg case, including his failure to recuse himself, his making false and misleading statements at the recusal hearing, his solicitation and receipt of $2000 from Amato while the case was pending before him, and his receipt of

other things of value from Creely, including Creely's payments for certain of Judge Porteous's expenses at the 1999 trip to Las Vegas.

Now let me turn to Article II. Judge Porteous's relationship with bail bondsman Louis Marcotte and his sister, Lori Marcotte, that Mr. Schiff discussed. For that it is necessary to return to Judge Porteous's roots as a state court judge. First, let me take a second to describe how the bail bonds business worked in New Orleans and why Judge Porteous's actions in setting bonds was so financially significant to the Marcottes.

This is somewhat detailed and I have tried to distill it to its essentials. A bail bond is basically an insurance policy. The prisoner pays the premium, typically 10 percent of the amount of the bail bond, to the bail bondsman, and the bail bondsman promises the court that the prisoner will show up when he is required.

So if a bond is set at $50,000, a prisoner would pay the bail bondsman $5000.

Louis Marcotte, the bail bondsman, will testify that he would make no money if the bond was set so high that the prisoner could not afford the premium or too low, so that the premium would be an

insignificant sum.

What Marcotte really wanted was for a bond to be set at the maximum amount for which the prisoner could afford to pay Marcotte the premium.

It is against this background that Judge Porteous's relationship with the Marcottes can thus be understood. Prior to taking the federal bench, starting in the early 1990s, Judge Porteous developed a relationship with the Marcottes, where he solicited and accepted things of value from them, and at the same time took numerous official acts as a state judge for their financial benefit.

First, as to what the Marcottes gave Judge Porteous, the Marcottes frequently took Judge Porteous to high-end restaurants for lunch, paying both for meals and drinks. The Marcottes also paid for numerous car repairs and routine car maintenance for Judge Porteous, they paid for home repairs for Judge Porteous when a fence of Judge Porteous had to be fixed.

The Marcottes also paid for a trip to Las Vegas for Judge Porteous.

In return, Judge Porteous willingly became Marcottes' go-to judge for setting bonds. Marcotte went directly to Judge Porteous with recommended

bond amounts, bond amounts that would maximize their income.

Judge Porteous was receptive to them and signed countless bonds at their request, judicial acts which he knew to be of financial benefit to them.

Now, at a prior hearing, Mr. Turley has argued to the committee that the House cannot identify any corrupt bonds that were set by Judge Porteous.

That is not the point or what the articles of impeachment allege. Rather, the evidence will demonstrate that Judge Porteous eagerly solicited and willingly accepted things from the Marcottes which he knew to be inducements and rewards for his taking many judicial acts for the financial benefit of the Marcottes.

The evidence will show that they were not social friends, as you or I may conceive that term. They knew each other solely through work, and they formed a corrupt, mutually beneficial relationship.

In addition, in addition to setting bonds as requested, Judge Porteous took other judicial acts of significance for the Marcottes.

In 1993, Judge Porteous expunged the

conviction of a Marcotte employee, Jeff Duhon. This was worked out between Louis Marcotte and Judge Porteous, and Judge Porteous expunged Duhon's conviction as Marcotte requested.

In 1994, at Marcotte's request, Judge Porteous also set aside the conviction of another Marcotte employee, Aubry Wallace. Again, this was worked out between Louis Marcotte and Judge Porteous. It took place during Judge Porteous's last days on the state bench, a final judicial act by Judge Porteous for the Marcottes' benefit, and evidences the extent to which Judge Porteous was beholden to the Marcottes.

Now let me turn to Judge Porteous's confirmation as a federal judge. At some point in 1994 -- at some point in 1994, Judge Porteous came under consideration to be appointed as a federal judge. Judge Porteous knew that if the White House and the Senate had found out about his relationships with either Creely or the Marcottes, he would never be nominated, let alone confirmed.

In the course of the background investigation, and during the confirmation process, Judge Porteous was asked questions on no less than four occasions that would have logically called for

his disclosure of his relationships with Creely and Amato and the Marcottes, had he been truthful and forthcoming.

First, at some time prior to July of 1994, Judge Porteous filled out a form referred to as the supplement to the SF 86. On that form is a question that goes to the very heart of the issue associated with the background process.

I want to show you that question and answer to -- I want to show that question and answer to the committee. In that form, Judge Porteous was asked.

"Question: Is there anything in your personal life that could be used by someone to coerce or blackmail you? Is there anything in your life that could cause an embarrassment to you or to the President, if publicly known? If so, please provide full details."

To which Judge Porteous answered "no."

Judge Porteous signed that document under the penalties of false statements. Of course, the evidence will show that he knew of the facts I have described and, thus, knew that answer was false.

The evidence will show that thereafter, on July 6 and July 8, Judge Porteous was interviewed by

an FBI agent as part of the background check process. Judge Porteous was asked by the agent the same sort of questions, and his answers were incorporated in a memorandum of the agent that summarized the interview.

Let me again show you the exhibit. In the FBI write-up of that interview, Judge Porteous was recorded as saying that he was not concealing any activity or conduct that could be used to influence, pressure, coerce or compromise him in any way, or that would impact negatively on the candidate's character, reputation, judgment or discretion.

After that interview, the FBI in New Orleans sent the background check to FBI headquarters in Washington, which reviewed the background check. Upon that review, they directed the agents to interview Judge Porteous a second time about a very particular allegation that the FBI had received in 1993 that Judge Porteous had taken a bribe from an attorney to reduce the bond for an individual who had been arrested.

This allegation did not implicate the Marcottes. So on August 18, the FBI returned and conducted a second in-person interview with Judge Porteous, probing possible illegal conduct on his

part in connection with bond setting.

Once again, the FBI records Judge Porteous as stating, quote, that he was unaware of anything in his background that might be the basis of attempted influence, pressure, coercion or compromise, and/or would impact negatively on his character, reputation, judgment or discretion.

Finally, on United States Senate committee on the judiciary -- the United States Senate committee on the judiciary sent Judge Porteous a questionnaire for judicial nominees. Again, I am showing you the document on the screen. In that questionnaire, Judge Porteous was asked the following question and gave the following answer.

"Please advise the committee of any unfavorable information that may affect your nomination.

"Answer: To the best of my knowledge, I do not know of any unfavorable information that may affect my nomination."

The signature block is in the form of an affidavit that the information provided in the document is true and correct.

Thus, on four occasions, Judge Porteous concealed the truth as to his relationships with

Creely and Amato and the Marcottes from the FBI and the Senate.

In addition, the two men who Judge Porteous had been receiving things from, Creely and Marcotte, were each interviewed by the FBI. Each made misleading or false statements designed to protect Judge Porteous.

Now let me turn to an act undertaken by Judge Porteous during the time of the confirmation process that evidences first that Judge Porteous well knew that his relationship with Marcotte was corrupt and, second, that demonstrates that he wanted to conceal that relationship from the Senate.

As I mentioned, Marcotte had an employee named Aubry Wallace. Wallace had two felony convictions, a burglary conviction and a drug conviction, for which he was on parole.

In the summer of 1994, at around the time period of the confirmation, Marcotte went to Judge Porteous and asked him to set aside Wallace's burglary conviction to take the first step in getting rid of his felony convictions so that Wallace would ultimately be allowed to obtain a bail bonds license.

The evidence will show that Judge Porteous

told Marcotte that he would set Wallace's conviction aside but only after the Senate had confirmed him.

I would like to read an excerpt from Mr. Marcotte's testimony before the House impeachment task force, which has been ruled admissible, that illuminates Judge Porteous's intent.

"Mr. Schiff: You mentioned that with respect to Mr. Wallace, that Judge Porteous expressed a reservation about setting aside the conviction until his confirmation took place. Can you tell us a little bit about that conversation? You said you had to press him. Did he tell you why he was concerned it would affect his confirmation?

"Mr. Louis Marcotte: Because if anyone -- if the newspaper grabbed hold of it, then he would be worried that it would interfere with him being -- his confirmation.

"Mr. Schiff: And can you tell us what his words were as best you can recall, how he expressed to you his concern that things might become public?

"Mr. Louis Marcotte: He said, 'Louis, I am not going to let Wallace get in the way of me becoming a federal judge and getting appointed for the rest of his life to set aside his conviction.

Wait until it happens and then I'll do it.'"

In short, with regard to Article IV, the evidence will show that Judge Porteous deliberately sought to conceal material information from the Senate, and did so in a calculated manner precisely with the intent to confound the Senate in the exercise of its confirmation responsibilities.

The factual record confirms Marcotte's testimony. Judge Porteous did, in fact, wait until after he was confirmed by the Senate, and before he was sworn in, to set aside Wallace's conviction.

Judge Porteous's concerns that he expressed to Louis Marcotte, that if the set aside was discovered, it might detail his nomination, appear to have been justified. The media picked up this conduct and reported that Judge Porteous had engaged in an unlawful act. But this time, however, Judge Porteous had secured his federal judgeship.

After he became a federal judge, the Marcottes' relationship with Judge Porteous did not continue precisely as when he was a state judge.

Judge Porteous could not do as much for the Marcottes and they accordingly did less for him. They stopped taking care of his cars. They took him to lunch less frequently.

However, even if the relationship slowed down, it did not come to an end. You will hear that Judge Porteous was influential with other state judges from the 24th JDC, where he had previously presided. Moreover, the Marcottes knew that it was useful to have a federal judge in their corner, so even when Judge Porteous was a federal judge, the Marcottes continued to take him to expensive lunches, especially where persons they sought to impress, state judges and businessmen, would be present.

As but one example, the evidence will show that Judge Porteous vouched for the Marcottes with newly elected state judge Ronald Bodenheimer in or about 1999. Bodenheimer, who prior to Judge Porteous's intervention held the Marcottes in low regard, ended up forming the same sort of corrupt relationship with the Marcottes that Judge Porteous previously had with them, accepting meals, home repairs and hospitality on various trips, and in return, setting bonds as they requested.

Ultimately, Bodenheimer and another state judge, Alan Green, went to jail for conduct that was substantially similar to that of Judge Porteous vis-a-vis the Marcottes.

Both Louis Marcotte and Lori Marcotte were also convicted of felony offenses for having given numerous state officials, including judges and law enforcement personnel, things of value.

Thus, Article II alleges that while he was a state court judge in the 24th Judicial District Court in the State of Louisiana, and continuing while he was a federal judge in the United States District Court for the Eastern District of Louisiana, Judge Porteous engaged in a corrupt relationship with bail bondsman Louis M. Marcotte, III and his sister, Lori Marcotte.

It also alleges that as part of this corrupt relationship, Judge Porteous solicited and accepted numerous things of value, including meals, trips, home repairs and car repairs, for his personal use and benefit, while at the same time taking official actions that benefited the Marcottes.

In Article IV, charges that Judge Porteous, quote, knowingly made material false statements about his past to both the United States Senate and to the Federal Bureau of Investigation, in order to obtain the office of United States District Court judge.

The last aspect of our case relates to Judge Porteous's bankruptcy while a federal judge, set forth in Article III. Throughout the 1990s and into 2001, Judge Porteous's financial condition deteriorated, largely due to gambling at casinos, to the point that by 2001, when he filed for bankruptcy, he had over $190,000 in credit card debt.

There are different ways that the evidence will describe his financial activities, but perhaps the most compelling is that his credit card statements from 1995 through 2000 reflect over $130,000 in gambling charges, and his bank statement from 1997 through 2000 reflect over $27,000 in cash withdrawals at casinos.

In 2000 Judge Porteous met with bankruptcy attorney Claude Lightfoot about his financial predicament. The evidence will show that Judge Porteous did not tell Lightfoot at that time, or indeed at any time, that he gambled.

They decided that Lightfoot would attempt to work out Judge Porteous's debts owed to his creditors and then, if that failed, Judge Porteous would consider filing for bankruptcy.

Lightfoot's attempts at a workout failed,

and in or about February of 2001, Lightfoot and Porteous commenced preparing for chapter 13 bankruptcy.

In March of 2001, in the weeks and days immediately prior to filing for bankruptcy, the evidence will show that Judge Porteous undertook numerous actions to conceal assets, to conceal certain unsecured debts and to structure his financial affairs so that he would be able to continue to gamble and obtain credit from casinos while in bankruptcy.

First, as part of these efforts, Judge Porteous, in consultation with his attorney, agreed that he would file his bankruptcy petition under a false name. To further this plan, Judge Porteous obtained a post office box so that his initial petition would have either his correct name or a readily identifiable address. He secured that post office box five days before he filed bankruptcy.

Ultimately, on March 28, 2001, Judge Porteous filed for bankruptcy under the false name G.T. Ortous, and with a post office box that Judge Porteous had obtained on March 23, 2001, listed as his address.

Judge Porteous signed his petition twice,

once under the representation, "I declare under the penalty of perjury that the information provided in this petition is true and correct," the other over the typed name "G.T. Ortous."

On April 9, 2001, Judge Porteous submitted a statement of financial affairs and numerous bankruptcy schedules. This time they were filed under his true name.

However, the evidence will show that they were false in numerous other ways, all reflecting his desire to conceal assets and gambling activity from the bankruptcy court and his creditors.

I'm not going through all his false statements during the bankruptcy at this time, but I thought I would at least point out some to you.

He knowingly failed to disclose that he had filed for a tax refund claiming a $4400 refund, even though the bankruptcy forms specifically inquire as to whether he filed for a tax reform. He checked that box "no."

He knowingly failed to disclose that he had gambling losses within the prior year, even though the form specifically asked that question. In fact, he has admitted before the 5th Circuit that he had gambling losses.

He deliberately concealed casino debts he had incurred in the weeks prior to filing, even though the forms in various places would have required those to be disclosed.

He reported his account balance in his checking account as $100, when the day prior to filing he had deposited $2000 into the account.

He deliberately concealed altogether a money market account that he regularly used in the past to pay gambling debts. And there are others we will establish during the trial.

The single organizing principle that arranges this pattern of false statements is Judge Porteous's desire to conceal assets and to conceal his gambling so that he could gamble while in bankruptcy without interference from the court or the creditors or even his lawyer.

At a hearing of creditors on May 9, 2001, Judge Porteous was asked under oath to vouch for the accuracy of his schedules, to which he testified falsely as follows:

"Bankruptcy trustee: Everything in here true and correct?

"Judge Porteous: Yes."

That statement, like so many of Judge

Porteous's statements under oath that you will hear about during this proceeding, was false. That bankruptcy trustee also informed Judge Porteous that he was on a cash basis going forward.

At the end of June 2001, bankruptcy Judge William Greendyke issued an order approving the Chapter 13 plan and specifically ordered Judge Porteous not to incur new debt without permission of the court.

Notwithstanding Judge Greendyke's order, Judge Porteous did incur debt. He applied for a credit card, more particularly, Judge Porteous continued to borrow from casinos without the court's permission. In some instances he paid those casino debts back through the bank account that he concealed.

In short, the evidence will show that he engaged in a pattern of deceitful activity designed to frustrate and confound the bankruptcy process.

I know I've taken some time here, and I appreciate your attention. Now let me turn the podium back to Mr. Schiff.

MR. SCHIFF: Senators, I mentioned at the outset the vast majority of what you've now heard of the evidence is uncontested, so what are the issues

here?

There are really two arguments the defense will make, and the central one is this: Porteous did nothing wrong. Judge Porteous may have done all of these things but there's nothing wrong with any of it. None of it was unethical, improper, wrong. It is nothing more than an appearance problem. He is being impeached essentially for having lunch.

That is the gist of the defense. There will be a suggestion that Judge Porteous may have done all these things but the House chose not to charge him with a violation of the kickback statute, 18 USC, code section whatever. When as the Senate has already made clear to counsel, this is not a criminal case and the House has no obligation to charge or prove the elements of a particular statute.

There will be a similar suggestion that the House has not charged a violation of the Honest Services statute, when, of course, he's not charged with violating that statute either nor is the House required to make a charge of a particular code section.

There will even be a suggestion that after all, Senators, we're talking about New Orleans.

It's New Orleans. They all do it, and if you're going to impeach judges in New Orleans for this kind of stuff, you're going to have to impeach all of them. There will be a hint of that. But the real argument is he did nothing wrong, and on this the House could not disagree more.

We believe that the evidence in this case fully supports the view of the House of Representatives that sending court cases to a law firm and taking cash back is wrong, dead wrong.

The evidence will show that allowing yourself to be wined and dined by lawyers who have a case before you is wrong. The evidence will show that allowing those lawyers to pay for parties, to pay for your lunches, your liquor, your hotel room, to have a stripper dance in your lap, all of that is wrong.

To falsely represent your financial relationship with lawyers in the courtroom is unethical and wrong. The evidence will show that to solicit cash from lawyers with a multimillion-dollar case under submission in your courtroom is wrong. To set bail based on how much it will benefit a bail bondsman is wrong. To accept car repairs and home repairs and lunches and liquor from that same bail

bondsman is wrong.

The evidence will show that to expunge the convictions of their employees, to recruit other judges to form the same corrupt relationship is wrong. To file a false petition in bankruptcy is wrong.

We believe that when you hear the evidence, the uncontested evidence, you will agree it is wrong and that he must be removed from the bench.

There's a second argument the defense will make that I also want to comment on very briefly, and that is the Senate cannot consider the evidence of any of Judge Porteous's conduct before he was sworn into federal office.

As Representative Goodlatte's evidentiary presentation made clear, some of the conduct in articles 1 and 2 took place before the judge's appointment to the federal bench, during the confirmation proceeding and after his appointment to the federal bench.

Article 3, the bankruptcy count, involves conduct only while he was on the federal bench, and the final article, Article IV, involves conduct during the confirmation process itself.

In Judge Porteous's view, the Constitution prohibits the Senate from considering in an impeachment proceeding anything that took place before his swearing in.

The Senate confirmation process, in this view, is a high stakes game of hide the ball. If you can get confirmed, no matter what you conceal, no matter what false representation you make, you are home free for life.

Nothing in the Constitution compels this view. In fact, the Constitution is silent on when the high crimes and misdemeanors must take place.

But Judge Porteous would have you read into that silence an intent to make any prior conduct unreachable. This would lead to an absurd result.

Let us say the evidence showed that a judge had committed murder prior to his appointment. Could he not be removed? Let's say that the evidence showed the judge were convicted and sentenced to jail after their appointment to the federal bench but based on conduct that was committed before they were appointed to the federal bench.

Can we imagine a situation where that

judge might serve the rest of their life in jail and the Senate would be powerless to remove them or withdraw their salary or pension?

In this case, the defense makes much of the fact that Judge Porteous was not prosecuted by the Department of Justice. Let's say that he had. Let's say that he had been prosecuted for the curatorship scheme. It would be the defense's position that because the conduct took place before, notwithstanding that he goes to jail now, he cannot be impeached or removed from the bench.

As Professor Amar, one of the nation's leading constitutional scholars, testified before the House, if a judge bribed his way onto the bench, would he be beyond the reach of impeachment? Of course not.

The standard, we believe, for impeachment is whether the judge has misdemeaned himself so much that he betrayed public trust and cannot be allowed to remain on the bench. Viewed from this perspective, it matters not when the actions took place but whether the public can have confidence that the judge will honestly and honorably undertake his public responsibilities and in accordance with the law.

In this case we believe the evidence will show that the public cannot have that confidence.

Let me conclude where I began with one final observation on the standard to be applied as you hear the evidence. What does it mean to betray a public trust?

I can only give you my view, and that is if I were a member of the public and I had to appear in Judge Porteous's courtroom in the future, could I have the requisite confidence that he would undertake his responsibilities in accordance with the law?

If I had a case in his courtroom that was very important to me and opposing counsel was a friend of the judge, could I be confident that he was not taking cash from them, that he would disclose his full relationship with them, that he would not ask for more cash while that case was under submission, that I would not need to hire another crony of the judge to protect myself? I simply could not have that confidence.

If I were a creditor in a bankruptcy case, could I expect a fair result when the bankruptcy party -- when the bankrupt party lied on bankruptcy petitions, used an alias, concealed debts or

violated the court order by incurring new gambling debts? How could I have that confidence?

When the party in question can say, Judge, how can you criticize me for filing under a false name? Doesn't the name Ortous ring a bell?

With that, Senators, I would conclude my remarks.

CHAIRMAN MC CASKILL: Thank you. Judge Porteous's counsel now has an opportunity for an opening statement.

MR. TURLEY: Thank you, Chairman McCaskill, Vice Chair Hatch, distinguished members of the Senate Impeachment Trial Committee. Good morning.

My name is Jonathan Turley, and I have the honor of representing United States District Court Judge G. Thomas Porteous, Jr.

Joining me at counsel's table with Judge Porteous are my colleagues, Daniel Schwartz, Keith Aruzada, Brian Walsh, P.J. Meitl, Dan O'Connor, from the law firm of Bryan Cave.

Senators, if the parties agree on one thing, it is this: By any measure, this is an historic moment. It's not simply because this constitutional proceeding has only occurred 14 times

in our history. It's a proceeding that the framers crafted with the likes of James Madison to guide your actions today, this week and in this case.

In the history of this republic, in over two centuries, there has only been seven federal judges, of thousands, that have been removed under this standard.

Now, for past senators, and frankly currently senators, it would be an easy thing to simply convict the judge and yield to the passions of controversy. Yet this is an occasion where the Senate is given a specific duty to adjudicate, not just legislate or deliberate. Impeachments are not about one judge. They're about all judges. And the constitutional guarantees under which they serve.

James Madison stated it best when he warned that removal must be based on a high showing, a high standard, to avoid interpretations, quote, so vague as to be the equivalent of tenure at the pleasure of the Senate.

For that reason, the framers adopted the standard of treason, bribery or high crimes and misdemeanors.

It is the obligation of every Senator -- and I know you take these obligations seriously --

to make two distinct determinations before voting to remove a federal judge.

First, you must conclude that the underlying facts, the alleged acts, were proven to have occurred. In a criminal case, facts must be proven beyond a reasonable doubt, a standard should be no lower for an impeachment, particularly in a case where the accused was never afforded the protections and due process of a criminal trial.

Second, if the acts were proven to have occurred, you must determine that the acts constitute treason, bribery or other high crimes and misdemeanors.

In most past cases, the second determination was the focus of your deliberations, the focus of the Senate.

However, in this case your factfinding has far greater impact in the absence of a prior trial record than all of these prior modern judicial impeachments.

As I mentioned, the House opted to bring this impeachment, despite the fact that Judge Porteous has never been indicted, let alone convicted of any crime. That is unlike any modern judicial impeachment.

Judge Porteous signed three tolling agreements to allow the government to prosecute him, regardless of the running of the statute of limitations. He waived that protection.

As will be shown, the Justice Department investigated these very claims and found that they did not warrant criminal charges. As a result, there was no trial, where evidence and witnesses were subject to judicial review, or a full adversarial process.

A trial of this kind in federal court would take weeks or months, in an actual court of law. You would have months simply spent on going through the evidence.

Indeed, even with a prior trial, former Judge Alcee Hastings's Senate trial lasted 18 days. In the 19 hours allowed to the defense after opening arguments, we will not be able to present a full panoply of witnesses or testimony as if this were a criminal trial.

Indeed, we've reduced our witnesses to try to stay within the allotted time. However, you will hear testimony that core allegations in this case either did not factually occur or have been contributed by core witnesses, including the House's

own star witnesses.

You will be hearing new evidence never disclosed previously in this case, including facts that were never disclosed to the members of the House before their impeachment vote.

Indeed, I expect many House members may be surprised to learn that the articles were based on alleged acts that we now know could not have occurred, as well as alleged acts used as the basis for removal that were entirely lawful under either judicial ethics or bankruptcy rules.

Indeed, this is the first impeachment that I know of where the House impeached on some factual allegations that didn't actually occur. I know of no other impeachment where facts were found, and we will demonstrate clearly, that the acts didn't happen, simply did not happen.

This impeachment reads like a scene in Sherlock Holmes in the Silver Blaze case, where Holmes solved a mystery by noting "the curious incident of the dog in the nighttime." The Scotland Yard detective, however, objects and tells Mr. Holmes the dog didn't do anything in the nighttime. To which Holmes responds that was the curious incident.

It was the absence of the dog barking that Holmes found so suspicious.

The curious incident in this case is that while the House continually refers to a massive investigation of various judges called Wrinkled Robe, and despite the fact that Judge Porteous waived the statute of limitations on crimes, no indictment was ever brought against him, after years of inquiry.

There was a reason the dog did not bark in this case. Judge Porteous's actions, while in some cases showing poor judgment, were, in fact, entirely legal.

Now, there's been an effort to portray the defense past inquirers in this case as to cast blame on the judges of Louisiana, or suggesting that misconduct is generally accepted. Mr. Schiff attempted to make that argument, saying that we were going to argue, oh, it's just New Orleans.

That's not what we're arguing. We've refrained from answering those types of ill-informed typecasts in the Times-Picayune. We waited to present the evidence to you.

The purpose of this evidence is to show how small courthouses work, not just in Gretna, but

around the country.

Sitting here in D.C. can warp your view of legal practice. On any corner of this city, you can throw a stick and hit two lawyers. In most towns, small communities carry out the daily business of the law, in a civil and close-knit environment. Lawyers and judges grow up together. They socialize with one another.

What may seem sinister about a judge knowing a bail bondsman, for example, in Washington is not surprising in a town like Gretna, where there's basically one bail bondsman, handling all the bonds going through the judge's chambers.

While we will present new evidence to you, however, we will ask you to keep in mind two legal truths.

First, while we feel obligated to address the allegations about Judge Porteous when he was a state judge, a federal judge cannot be removed on the basis of pre-federal conduct, including in this case conduct going back 25 years before taking office.

I will not argue the motions to dismiss that we have filed on these threshold issues. As you are probably aware, constitutional scholars have

criticized these articles as unprecedented and dangerous, dangerous to our system.

The House did not invite a single scholar to testify, to offer substantive evidence on why these articles are so out of line with the constitutional standard.

Now, Mr. Schiff refers to Mr. Omar, Professor Omar, as testifying and somehow suggesting that this is not a problem. I found that rather surprising, since what Professor Omar said was the state court stuff, well, that's arguably just state court stuff. He dismissed the idea of pre-federal conduct.

Now, we've not been allowed to argue these threshold issues before you. I understand the procedural difficulties of presenting that evidence to the committee and I'm not questioning that decision.

But we only ask the individual senators to support our request to be able to present these issues to the full Senate before closing arguments.

The defense side of these issues has never been heard in oral arguments, since they didn't call any witnesses that would support this view in the House. We are only asking for the same time allowed

to the House and the defense that were given to the earlier motions, to present to the Senate why this is unprecedented, why it is dangerous, and then we are prepared to go forward with the closing arguments.

We are not the only ones asking the members to hear such arguments. In the 5th Circuit, Judge Dennis and his colleagues stressed that "Congress lacks jurisdiction to impeach Judge Porteous for any misconduct prior to his appointment as a federal judge."

You just heard the House managers. They want to change that. I think you should seriously consider whether you want to change that, and we would like to be heard in the full Senate to that effect.

Second, whether it is a lunch or a gift, none of these acts actually violated state ethics rules in Louisiana, and many other states. What the Congress has impeached this judge for is an appearance of impropriety, a matter already addressed by the 5th Circuit.

Indeed four appellate and district court judges in the 5th Circuit expressly objected that the circuit had only found and submitted appearance

violations and not impeachable conduct. I commend that decision to you. It's one of the most -- it's one of the best written opinions I have read in a long time.

Judge Porteous has already accepted punishment for any lapse in judgment, despite what the House managers just told you. He has been sanctioned by the 5th Circuit for those appearances of impropriety, and he will retire next year from the federal bench.

Such appearance controversies are routine, and their use as the basis for removal would wipe away centuries of precedent by this body in defining what are removable offenses.

Perhaps for that reason, the House managers that were quoted in the media last week, stating that they want the senators to adopt a new standard, to treat the impeachment process as merely an employment termination case, they would literally have this body adopt the very standard that Madison rejected, for judges to serve at the pleasure of the Senate, like at-will employees.

Senators, federal judges are not at will employees.

You will hear from all four of the major

House witnesses, Mr. Creely, Mr. Amato and the two Marcottes, that they never bribed this judge, and that they did not and do not believe this judge could be bribed.

They will all tell you that Judge Porteous was viewed as a brilliant jurist who would not be influenced in a decision by any friendship or gifts.

In observing our witnesses and the new evidence that we have gathered, we ask you to demand the same burden and showing from the House that you would want for yourself if you were accused of wrongdoing and threatened with removal from federal office without the due process of a trial.

You may not approve of the state rule, or even the choices made by Judge Porteous. However, impeachments, as you know, are not popularity contests. The framers left it to 100 senators who they believed had the institutional integrity to demand a showing of proof and not simply passion from the House.

In two centuries, Senators have shouldered that duty brilliantly. They have refused to remove judges when there is more proof -- there is more passion than proof.

Now, unfortunately, this case proves one

thing, and an old military adage that when you only have a hammer, every problem looks like a nail.

Faced with witnesses who deny criminal acts, including denials of bribes and other crimes by Judge Porteous, the House substitutes generalized ethical claims for the missing crimes and evidence in this case.

It was not enough that Judge Porteous accepted sanctions from his court or announced his resignation next year. The staff and resources for impeachment had been committed, and regardless of the damage to our constitutional system, the House demanded removal on the basis of appearance of impropriety and minor bankruptcy violations.

The result is precisely what Madison warned you against, a standard so dangerously ill-defined that Congress could literally remove judges at its pleasure.

Let's turn to Article I. In Article I, the Congress -- the House impeached Judge Porteous on the theory that he deprived the public and litigants of, quote, honest services by failing to recuse himself from presiding in the Lifemark case that my opposing counsel mentioned to you.

This article poses a unique problem for

you. For the first time in history, the House based an article of impeachment on a legal theory that was later found unconstitutional by the Supreme Court in the case of Skilling versus United States.

That is also in one of those pending motions that we're asking to be heard on.

Putting aside the fact that the Supreme Court rejected the honest services theory, and by the way, the House managers knew that case was pending when they crafted that article around honest services, this article seeks to remove a judge over his response to and failure to grant a recusal motion for a single case in decades of judging.

You will hear testimony about hundreds of judges who face recusal motions around the country every year, and they are occasionally reversed due to personal conflicts in a case with counsel or parties.

You will hear from New Orleans Professor Dane Ciolino, who is a widely cited expert to the Louisiana judicial system.

You will see dozens of cases of personal conflicts with judges, including financial conflicts in recusal controversies.

To remove a judge for his decision not to

recuse himself would create an absurdly low standard and could be used against literally dozens of currently sitting federal judges.

The use of such an instance amounts to removing a judge because of his judicial decisions, not because of his conduct. What is fascinating is that the lawyers in the Lifemark case testified that Judge Porteous gave them a fair trial. Even the lawyers that lost the case testified that Judge Porteous gave them a fair trial.

The House brings up this business about $2,000 and alleges that Judge Porteous's failure to recuse himself was due to a wedding gift that he received, a gift that was split by his two long-term friends, long-time friends and former partners, Bob Creely and Jake Amato. The gift was made in conjunction with the wedding of Judge Porteous's son and did not occur until three years after the recusal hearing.

Now, I know that in impeachments, facts become fluid, and friends suddenly become cronies. Suddenly, Mr. Amato is a crony, according to the House Manager. Suddenly Mr. Creely is a crony, not friends.

You will hear from them. Whatever

disagreement we may have with their testimony, we don't believe they're cronies. Indeed, Judge Porteous has never challenged their integrity or their credibility, even though some evidence they gave was painfully against him.

You will hear from both Mr. Creely and Mr. Amato, the two witnesses on this allegation, that they have stated unequivocally that they did not give this money to Porteous as a bribe or to influence him. Indeed, both have testified that they were and continue to be absolutely certain that the wedding gift had no influence on Porteous as a federal judge. It was a gift, a wedding gift from long-standing friends.

This is not to say, Senators, that there is not a conspiracy in this case. There is. However, the real conspiracy involved Judge Porteous not as the subject -- I'm sorry. The real conspiracy involved Judge Porteous, not as the beneficiary, but the subject of the conspiracy. You will hear testimony that a large hospital corporation had hired an army of lawyers that succeeded in delaying a lawsuit brought against the corporation by a family of pharmacies.

At issue was control of the St. Jude

Hospital, potentially worth hundreds of millions of dollars. When this case came to Judge Porteous, the case had been bounced from judge to judge for years. In that three-year time span, the parties had gone through 13 judges. That's over four judges per year.

For its part, Lifemark seemed eager to keep the case bouncing as a defendant from court to court and actually demanded a 14th judge. Judge Porteous was assigned to this case randomly and looked at this record and said in open court, I'm going to be your last judge in this case.

That did not sit well with Lifemark or its lead counsel, Mr. Joe Mole. While Judge Porteous confirmed his close relationship with plaintiff's counsel in a subsequent recusal hearing, he stated that he did not view that relationship as a barrier to his ruling fairly.

And by the way, I also would like you to read that hearing transcript. I didn't see him pouncing on people. What I did see at the end of the transcript was his working with Mr. Mole to make sure that Mr. Mole had everything he needed to appeal him to the Fifth Circuit. I commend that transcript to you to read, and you can decide who is

presenting it more fairly.

Indeed, you will hear from witnesses that Judge Porteous's response to the refusal motion was consistent with his practice and those of his colleagues in the former state courthouse in Gretna. He had been a judge for 10 years in Gretna. It was common for judges to hear cases from friends and recusals rarely occurred, since most judges and lawyers in that small legal community grew up with each other or knew each other. You would shut down small town courts if judges recused themselves from every case with a friend or acquaintance. You just wouldn't get anything done.

After Judge Porteous refused to pass the case to another judge, that 14th judge in three years, Mole took an extraordinarily step. The magistrate in the case, Jay Wilkinson, was a friend of Mole. Mole wanted Porteous gone, and he ultimately went to Judge Wilkinson's brother, Tom Wilkinson, the Jefferson Parish attorney, someone who could help with a problem with a judge.

Tom Wilkinson is reportedly under criminal investigation in Louisiana for corruption, and his brother, Magistrate Wilkinson, repeatedly recused himself from all criminal cases.

Tom Wilkinson arranged with Mole to have one of Porteous's closest friends, Don Gardner, enter the case. Gardner, as you will hear, was far closer to Porteous and his family than either of the plaintiff's attorneys, Mr. Amato or Mr. Levenson.

Mole not only promised Gardner $100,000 for just appearing in the courtroom in the case, he promised him an additional $100,000 if he could get Porteous to recuse himself or otherwise leave the case. Under this effective bounty agreement on a federal judge, Mole had just promised another lawyer a total of $200,000 for just appearing in the case and getting this judge to remove himself.

What is remarkable, Senators, is that this unethical promise was put into a written contract, and we have that contract. In return, Gardner gave the magistrate's brother, Tom Wilkinson, $30,000. The problem was that Porteous wasn't going anywhere.

While the Mole conspiracy should have been the subject of an investigation, the House decided to call Mole, as they just told you, as their witness on the alleged unethical act of Judge Porteous. Now, ultimately, Judge Porteous ruled against his closest friend, Gardner, and cost him that $100,000 bounty and other possible fees.

With only a gift made years after the recusal hearing, the House tried to rely on money given to Judge Porteous over a 25-year friendship before he became a federal judge. This is what led those judges in the Fifth Circuit to write that opinion that I just referred to.

The House argues that Judge Porteous, as a state judge, granted curatorships to Bob Creely in order to get occasional loans and gifts from his friend. Mr. Goodlatte just told you that the judge concedes the relationship between the money and the curatorships. That's news to me, and it's certainly news to the judge. We have never conceded that.

However, let's look at the actual witnesses. Mr. Creely recently testified in a deposition conducted by the defense that the Senate allowed us to hold. This was his first exposure to the full examination of defense counsel.

In that examination, Mr. Creely expressly and repeatedly denied that there was any connection between his loans and gifts over decades of his relationship. That is why you didn't see any quotes from the recent deposition being thrown up on these screens by the House.

Instead, they went back years to find

better testimony. Not that long ago, Mr. Creely, just a matter of a few weeks, said that he gave money to the judge because they were close friends. He testified he never expected any benefit from such small loans or gifts and that Judge Porteous would never give him any benefit, and he stated repeatedly these gifts had nothing to do with curatorships. In fact, Mr. Creely noted in the few times he appeared before Judge Porteous, Porteous ruled against him, including one case where Judge Porteous cost him a $400,000 judgment.

The House continues to advance this allegation on the basis of a statement from Amato about what he remembers Creely telling him. We have Creely. Creely just testified and said that he did not give money in relation to the curatorships. He himself has now expressly denied that in a sworn testimony.

We can disagree with Judge Porteous's decision to remain in Lifemark, but Judge Porteous had a good reason to refuse to kick this case down the road to a 14th judge. When you look at that docket, most judges would view that docket as a mockery. Someone is gaming the system. You cannot burn through 14 judges in three years. You will

hear that Judge Porteous has had a reputation for stopping this type of thing, for moving dockets along and resolving cases.

And by the way, if you look at that docket, you can tell a lot of these judges were more than eager to get rid of this case. It was highly complex, perhaps one of the most complex cases I've ever seen. Ultimately, the spell-bindingly complex case was decided by the judge.

By the way, the Fifth Circuit reversed it in part and upheld it in part. But they disagreed with the judge's ruling. This was a Texas panel that disagreed with Judge Porteous on a rather arcane aspect of Louisiana law.

Now, I'm not going to explain that arcane Louisiana law any more than Mr. Schiff did, for one simple reason. I'm not sure I understand. Reviewing this case only served to reaffirm my decision to be a constitutional law professor.

In the end, however, a disagreement over his judicial decision is woefully insufficient as a basis for removal and would create -- would elevate a routine conflicts issue to a constitutional clash between two coequal branches of government. Moreover, the House would have you remove a judge,

not only on the basis of pre-federal conduct, but conflicted pre-federal conflict evidence.

You have two former partners who have now disagreed on the underlying facts, an evidentiary status that would not even meet the lower preponderance of the evidence standard in a court.

Once you strip away all the rhetoric, and once you look at all the evidence, you will find that the House's solution to this problem was not to increase the evidence to meet the standard, but as you just saw, to try to lower the standard to meet the evidence.

Let's turn to Article II. In Article II, the House impeached Judge Porteous purely on the basis of pre-federal conduct that goes back decades before he became a federal judge. This is precisely, by the way, what the House's own experts said they could not do. Article II alleges that while a state judge, Judge Porteous received, quote, things of value from bail bondsmen, Louis Marcotte and Lori Marcotte, a brother and sister, and took actions that benefited the Marcottes.

Notably, not only did the federal government reject this as the basis of criminal charge, but the Fifth Circuit expressly ruled out

relying on such acts on the state level as relevant to his position as a federal judge. The allegations in Article II were not a part of the Fifth Circuit inquiry. The Marcottes didn't testify, because those judges, as with past Senators, treat pre-federal conduct as immaterial to whether he abused his office as a federal judge.

The House position on the bond allegations with the Marcottes has continued to evolve, as conflicting evidence has mounted in recent weeks. As you will see, roughly a week ago, the House stated in its pretrial statement that "the House does not allege that Judge Porteous set any particular bond too high or too low."

So despite months of discussing bond amounts and splitting bonds, the House has now conceded that Judge Porteous did not manipulate bond amounts to assist the Marcottes. What is left is the fact that he signed bonds as a state judge with the Marcottes, who, by the way, handled 95 percent or more of the bonds going through that state court.

What is left is that Judge Porteous had lunches and received gifts from the Marcottes, as did other judges in the district. Yet, the government does not claim a single bond, not one was

ever set by Judge Porteous as too high or too low to assist the Marcottes. Moreover, the House concedes that Judge Porteous did not sign a single bond, not one, for the Marcottes as a federal judge, not high, not low, not ever as a federal judge.

Putting aside the fact that Judge Porteous's conduct as a state judge is irrelevant to his conduct as a federal judge, Article II ignores that judges are not barred from receiving meals and gifts from lawyers or others. While the House cannot produce any receipts for the gifts or meals, it just told you that it could be hundreds of meals, but if that's our evidentiary standard, it could be millions of meals. He could have never stopped eating.

The fact is, we don't have the receipts in the record, but we don't deny that Judge Porteous and all of the judges in Gretna often had lunches bought for them. But they're suggesting that this is, quote, corruption, even if it didn't violate judicial ethics.

You will hear from all four of the House's star witnesses, Creely, Amato, and the Marcottes, were regularly bought meals and given gifts by lawyers, bail bondsmen, and others. We're not

saying that this was a den of corruption. We're saying it was lawful. And if you go to a lot of small towns, you will see the same thing.

If you want to restrict the rules, you can change the rules. But by the way, we've put into the record opinions by courts that say they believe this is a good thing, to have judges and lawyers who have social relationships. We've already put that in the record.

This is something that's not new. You're going to see this comes up a lot when people allege these recusals, and uniformly, the courts have said don't come to us and just say that this guy is a close friend. That's not enough to force a judge to recuse himself, let alone to remove him in a constitutional trial.

The House does its best to take a small number of lunches as a federal judge and make it look sinister. The problem is that the House could only come up with six lunches at a place called the Beef Connection in Gretna, Louisiana, when he was a federal judge, those lunches, six.

Now, what the House did is they presented these lunches and basically portrayed the total value of the lunches that went to Judge Porteous.

It looks like he received a considerable amount of money in these lunches.

However, as this display shows, the House actually was dealing with the totals of meals for large parties where Judge Porteous was just one of many lunch guests. They just charged the whole lunch against him. In reality, even if he was present at these lunches, it would amount to $250 in five years. I'd like to repeat that. $250 in five years. These meals included meals as low as $29.

Now, by the way, I said if Porteous was at these lunches. The reason I say "if" is because the House included a couple of meals where there's no specific record of Judge Porteous being actually at the lunch.

However, what their position is that since someone had Absolut vodka and Judge Porteous is known to drink Absolut vodka, it must have been him. So they added those two to the six, and they just counted those against him.

I can tell you in our visit to the Beef Connection, we were able to confirm that Judge Porteous was not the only person in Louisiana who drinks Absolut vodka. But as you can see, the key fact that they rely on is a notation that somebody

at this table had two Absoluts, and they submitted that to you so that you could throw it into the mix for a removal of a federal judge.

The House suggests that such meals from the Marcottes were intended to influence Judge Porteous and get him to help them with bonds, a type of beef-for-bonds theory. By giving him beef, he give them bonds. But now the House concedes that they're not saying he set bonds too high or too low for the Marcottes. You actually didn't hear them cite any bonds that were invalid or that this guy didn't even deserve a bond.

After our deposition with the Marcottes, the House had to concede this point. You will hear from both of the Marcottes, if their testimony is consistent, that they did not believe that Judge Porteous was influenced in his decisions on bonds by meals or gifts. There was no beef for bonds. Indeed, they have both testified that Judge Porteous regularly rejected bonds from them and could not be bought.

You will hear from Gretna Criminal Clerk Darcy Griffin that Porteous insisted that any representations made by the Marcottes be checked out with the district attorney, the police, or the jail

before the granting of a bond. Indeed, you will hear testimony that Judge Porteous himself often picked up a phone, called the prosecutors or called the jail to personally make sure that the underlying facts were correct.

Perhaps the most serious misrepresentation to the House was the portrayal of Judge Porteous's granting bonds and splitting bonds. Now, a split bond is well known to criminal defense attorneys. It is simply split between a commercial component and a property or third-party component. In this case, a person who might not be able to afford the full or entire bond could still secure the bond by getting a family member to come in and put her property up as a surety.

Despite the representations made in this case, Judge Porteous did not invent split bonds. Most judges in Gretna split bonds with the support of the state prosecutors. Split bonds were viewed as a way to guarantee the return of prisoners who would otherwise be released under mandatory court orders. If you have a bond on the guy, someone will find them because they have a financial interest to find them.

You will hear from former District

Attorney John Mamoulides and Louisiana Judge Joseph Tiemann on how and why split bonds were widely used and accepted in Gretna.

Likewise, the House has alleged that Judge Porteous dramatically increased the number of bonds as he was leaving to take the bench. This was a big part of what the House was told before their impeachment. There was this -- it's called the floodgates theory. And you heard part of it today, but you will notice that they stopped talking about the bond setting and now they're talking about an expungement, one or two expungements or set-asides.

The floodgate theory that the House members were told about was that in the last month, in the last day, Judge Porteous issued an unusually high number of bonds in repayment for the beef and other benefits from the Marcottes. The only problem with the floodgates allegation is it happens to be completely and demonstrably untrue.

It turns out there was only one bond signed by Judge Porteous on his last day and only 29 signed in the last month. It actually falls to 27 if you look at from the time he was confirmed. This is described by the Marcottes in their testimony as the average number of bonds for any period. There's

no floodgate.

However, to dispel any doubt, we asked the Gretna clerk to send us a random year from Judge Porteous's tenure as a state judge. We selected 1986. We had no information on that year other than the fact that it was before the Marcottes established themselves in the bond business.

One of the best ways to look at whether the floodgates theory is true, take a year before the Marcottes controlled the business. Those bonds have been submitted into the record and show that various months of that year exceeded the number of bonds signed by Judge Porteous during the so-called floodgate month in 1994, even though the Marcottes were not involved.

Indeed, one month, September 1986, shows 51 bonds signed by Judge Porteous, far greater than 19 bonds that was presented in this sinister way as this must have been a rush to try to pay back for those -- for the beef. Moreover, the 1986 records show a total of approximately 3,200 bonds signed by all the judges in the district.

Now, if we extend that over 10 years -- by the way, the number should be higher because Gretna over 10 years expanded and the Court actually

expanded. Let's take that lower figure and forget about expansion. That would mean at least 32,000 bonds passed through Gretna while Judge Porteous served on the bench.

The House was never told what the total pool of bonds were. They were never told that Judge Porteous signed more bonds in some months before the Marcottes established themselves.

Now, Mr. Goodlatte switched rails, and suddenly the floodgate theory is not about bonds, which was the subject of so much discussion with the House members. Now it's about two set-asides or expungement cases.

And what Congressman Goodlatte said is that Judge Porteous said that he was not going to set aside or expunge Aubry Wallace's case because he didn't want to do that before he was confirmed.

The only problem with that argument is it is also untrue. Wallace's burglary conviction was set aside on September 21st, 1994, before Judge Porteous was confirmed. Not only that. In the hearing, Judge Porteous said that he intended to expunge the record before he was confirmed. That was in open court.

All that remains in this case is the fact

that Judge Porteous signed bonds for the Marcottes. You will hear testimony that virtually all of the judges signed bonds for the Marcottes for one simple reason. The Marcottes reportedly did 95 percent or more of the bonds in Gretna. Virtually no one else was doing bonds in Gretna.

If you take any judge, you will find roughly 95 percent of the bonds came from the Marcottes for that obvious reason. Moreover, you will hear testimony that Judge Porteous was a national advocate for the use of bonds as a vital part of the criminal process.

Jefferson Parish during this entire period was under a court order for overcrowding. It was a case where virtually any prisoner in meant one prisoner out. It was one of the most stringent court orders in the nation.

And so people, thousands of felons were being released under court order and were just vanishing. These judges in Gretna would constantly call these people, and they would just be told they're gone. Judge Porteous -- and we've heard the House's own witnesses admit this -- often spoke publicly and encouraged other judges to use bonds, because the chance that a person will return if they

have a bond on them is much, much higher, because you've got a bail jumper agent who will find them.

Otherwise, the only way these people will be found is if they get pulled over by a police officer and they happen to run their record and say all right, you're a bond jumper. But if you put a bond on them, someone has a clear financial interest to locate that guy.

In fact, Judge Porteous, who has spoken nationally on this, was correct. Studies show that by getting a bond on any prisoner, the chances that they will end up in court and not flee or at least not flee and not be found, are much, much higher.

In the end, when you take all of this evidence -- let's strip away the false claims. Article II is nothing more than what Macbeth described, a tale full of sound and fury signifying nothing. He signed bonds as a state judge, like the other judges in Gretna.

Let's turn to Article III. We actually agree with the House Managers when they say this is the one that isn't based on pre-federal conduct. We actually agree with that.

Article III is, in fact, a nonpre-federal conduct article. Instead -- basically what they are

arguing, instead of pre-federal conduct, is that he made a series of errors and mistakes in connection with a personal bankruptcy that he and his late wife Carmella filed in 2001.

What is most striking about Article III is that the House is trying to use common problems that literally occur in hundreds of thousands of bankruptcy cases, which you will hear in testimony. They are trying to take something that occurs in hundreds of thousands of cases and saying it's the akin to things like treason and bribery.

To do this, the House suggests these errors were a part of a nefarious plan to defraud the bankruptcy court or his creditors. The problem with this theory is that Judge Porteous -- and I want to emphasize this -- paid more than he was scheduled to pay in bankruptcy. He paid more than what originally he was scheduled to pay his creditors.

That was never explained to House members. They just talk about this bankruptcy and errors in the bankruptcy, as if that's something new in bankruptcy. As thousands of citizens each year, Judge Porteous made mistakes in a personal bankruptcy case, but those mistakes had nothing to

do with his office, had nothing to do with the basis for removing him as a federal judge.

The Porteouses filed Chapter 13 bankruptcy protection in 2001. This case was processed like every other bankruptcy case with one exception. But ultimately, it resulted in the successful discharge of the portion of their debts in 2004, after they paid more than $57,000 to the trustee, of which $52,000 went to their creditors.

The exception I was referring to was that this case was scrutinized far more heavily than a normal bankruptcy case. He had two bankruptcy judges preside over it. A Chapter 13 trustee, Mr. Beaulieu, who you will be hearing from, administered. The Federal Bureau of Investigation and the Department of Justice investigated.

In fact, the DOJ and the FBI consistently met with the bankruptcy trustee while the Porteouses' bankruptcy case was still pending. This wasn't after. They met with the trustee while it was pending and discussed with him all of these allegations. Nevertheless, not one of these authorities, not the bankruptcy judges, not the trustee, not the FBI, not the DOJ, took any steps to alter the course of the bankruptcy case.

As in the Silver Blaze case, there was no bark to be heard to change the status of the bankruptcy case. What's more, the DOJ specifically declined to pursue criminal charges against Judge Porteous in connection with his bankruptcy case. As you know, the DOJ routinely prosecutes bankruptcy issues.

Finally, none of the Porteouses' creditors ever made an objection or filed a complaint. They had no problem with this bankruptcy.

The Porteouses, like so many Americans, simply became overwhelmed with their mounting credit card debt, which is the result of raising kids.

And yes, the House Managers keep on referring to the fact that they gamble. The secret is out. The Porteouses gamble. They gamble for recreation. They probably gamble too much, but that's not illegal.

With credit card bills mounting, they sought the help from a bankruptcy attorney that the House Managers referred to you earlier, Mr. Lightfoot. Embarrassed about their deteriorating financial situation, they asked Mr. Lightfoot to help them, quote, work out or restructure their debts. This was an effort to

avoid bankruptcy.

They worked through the summer and fall of 2000 and the winter of 2001 to avoid bankruptcy, and then they concluded that they would have to declare bankruptcy, as Mr. Lightfoot tried to work with the creditors. So February 2001 it became clear that they had to file for bankruptcy, and like many of us, in that case and certainly most of the people in bankruptcy, the Porteouses were shown to be horrible recordkeepers and, obviously, bad money managers. That's a fairly common trait, by the way, when people declare bankruptcy. They tend to have problems with records and money management.

During these discussions, Mr. Lightfoot proposed the idea that the Porteouses file their original bankruptcy petition under the pseudonym Ortous. Let me repeat that. Mr. Lightfoot proposed that they file under that name. He's previously testified to that effect. He said it was his idea to avoid embarrassment for the Porteouses and for their children, because they didn't want it plastered all over the Times-Picayune.

The newspaper in 2001 published weekly names of everyone who sought bankruptcy protection, and Carmella was particularly embarrassed by the

type of publicity for the family. While most bankruptcy filers enjoy anonymity through this process, it involves so many cases, public officials were and are singled out with their bankruptcy files.

As public figures yourself, I'm sure you can understand, these files are examined in excruciating detail, and people love it. They love to read about bankruptcy of famous people.

To avoid this, Mr. Lightfoot proposed that the Porteouses file their original bankruptcy petition under the pseudonym, and they also used a P.O. box that Mr. Lightfoot advised Judge Porteous to obtain. Mr. Lightfoot has testified that neither he nor Judge Porteous ever intended to defraud the Court or any of Porteous's creditors.

There's no evidence that Mr. Lightfoot proposed the changing of this name for this period because he wanted to assist in a fraud. His purpose was obvious and, frankly, was humane. He was trying to protect the family from the initial embarrassment of bankruptcy.

The Porteouses, however, when they filed those original papers, included their true Social Security numbers. Those numbers, as you will hear,

are very important in bankruptcy, because that's what's used to track. That's what creditors use to track people in bankruptcy.

Trustee Beaulieu later stated that he had seen the use of PO boxes in other cases and that since the names were changed before the first notice went to creditors, he said, quote, no harm, no foul. What you have to understand is that the names were just changed about 12 days later, so no creditors actually got this material. There were no creditors that were misled, and the trustee himself said look, it's no harm, no foul.

And you will also hear, by the way, even though the House makes this great deal about the use of a P.O. box, you will hear P.O. boxes are used all the time. More importantly, you have a trustee saying no harm, no foul. And the House turned around and said maybe no harm, no foul, but let's use it to remove the eighth federal judge in the history of the republic.

Judge Porteous and Mr. Lightfoot specifically claimed to file, and in fact they did file, that amended claim in 12 days, correcting the name and address. As a result, no creditor received any notice in connection with the Porteouses without

full and accurate information.

In the end, the only party that did not get information was the Times-Picayune that it was correct, but that was only for a short time, and the Times-Picayune quickly began running the very news stories that Mr. Lightfoot and the Porteouses wanted to avoid.

Throughout the bankruptcy process, and especially in connection with the decisions about what information to include in these filings, Judge Porteous relied heavily on Mr. Lightfoot. Even though he is a federal judge, I think you would understand most of the federal judges do not have expertise in bankruptcy.

The House has further alleged a series of other errors and inaccuracies in the Porteouses's bankruptcy schedules and materials. The House argues that each of these discrepancies must be a part of a dark plan to co-opt the bankruptcy system for his own gain.

Here again the facts simply don't support the allegations. And the allegations, even if true by the way, even if you take everything that my colleagues from the House have said, it would still not warrant a basis for removal. The House decided

small omissions of assets to suggest that creditors were defrauded.

However, the House never told the House members that the Porteouses were in the minority of debtors to successfully complete their bankruptcy. They were in the minority of debtors who completed their bankruptcy. Indeed, they provided almost 35 percent repayment to unsecured creditors and over $52,000. You will hear from experts, former judges and trustees, that this is actually significantly more value to his creditors than would have been the case under a Chapter 7 liquidation.

The House also relies on the fact that Judge Porteous gave Lightfoot his May 2000 pay stub for his income, but he later didn't supply an updated pay stub reflecting a slight increase in salary. What the House did not inform the House members was that this difference amounted not just to only about -- specifically, $173.99 per month, but that it had no material impact on the creditors who were paid $52,000.

Moreover, Lightfoot's files show that Judge Porteous did tell him that his net income was $7,900. He did tell him. He did reveal it and reveal it was higher than that earlier pay stub.

The errors were his counsel's and not Judge Porteous's.

Once again, I'm not casting aspersions on Mr. Lightfoot. These are very small things that happen in bankruptcy when you have all of these receipts coming from people who, obviously, had trouble managing their money.

Likewise, the House cites such errors as the Bank One account -- you just heard about some of this -- that had as low as $200 in assets, as somehow a clever design to defraud creditors. Does that track? I mean, does that really make sense, $200?

Then there's the Fidelity Homestead Association account. Now, here, you didn't just have $200, and we concede that. You had $283.42. So let's round it upwards, shall we? Let's say it's $300. Is that going to be relied on for the removal of a federal judge after 16 years of service? Whether it's a tax refund check or a single credit card, these problems are routine. That's what these experts are going to tell you.

Moreover, errors cited by the House members were actually not material to the bankruptcy plan, such as this business of small prepetition

payments that were not listed in the forms. The House members heard there were prepetition payments that you should consider to impeach this judge. The problem is that prepetition payments are legal under bankruptcy law.

While the House cites incurring new debt, there's no bar to incurring debt by statute in this area. It's important to remember that the confirmation order that you're going to hear about was designed to guarantee completion of the repayment plan. Most people don't complete it. The Porteouses did. They completed it and paid more under that plan.

Now, throughout these allegations, the House mentions errors and mistakes but never mentions that those issues had no impact, material impact on creditors who are, after all, the focus of the bankruptcy process. Both the Porteouses gamble as their primary form of recreation, a practice that Judge Porteous later stopped with professional help and hasn't resumed since.

However, the House Managers keep on trying to distract the Senate, as they did the House, by disclosing -- without disclosing key Louisiana law governing what are called markers. That's what

you're going to be hearing about. That's a marker. That's what you're going to be hearing about. In the dissent in the Porteous case before the Fifth Circuit, the judge objected to the use of markers as evidence of wrongdoing in bankruptcy matters because, and I quote, "under Louisiana commercial law, markers are considered checks as defined by Louisiana statute." They treat this as an uncashed check.

Now, should they have continued to gamble? No. But in the end, this continued gambling was not a problem for the creditors of the Porteouses. It was a problem for the Porteouses. It was a personal problem, and the judge overcame it.

We will be creating a record that was never made in the House on this issue of bankruptcy. You will hear from Professor Ralfael Pardo from the University of Washington who will explain important differences between Chapter 7 and Chapter 13 bankruptcies that the House appears to have missed in the earlier discussions. He will show errors like these are quite common by both debtors and creditors in bankruptcy cases and that mistakes in this case created no material harm to creditors.

You will also hear from United States

bankruptcy judge of the Northern District of Illinois, Ronald Barliant, who is widely cited and respected in this field. Judge Barliant will explain how Chapter 13 cases develop and how judges in bankruptcy rely on trust, he's like Magistrate Beaulieu. He will explain how the bankruptcy code contains no authority for an order barring a debtor from incurring debt after a bankruptcy petition, as simple as that, something the House staff just didn't mention to House members.

We will also explain that Congress has specified that the principal consequence for unauthorized debt is that the debt is simply nondischargeable. That's the consequence. If you have that debt, it's nondischargeable. I would say that's significantly different in magnitude from being removed in a Senate trial as a federal judge.

You will also hear from the United States bankruptcy trustee, Hank Hildebrand -- we're not just calling Beaulieu. We're going to call a separate trustee. Magistrate Hildebrand is another leader in his field who has worked extensively. His opinions are cited quite widely.

He will explain that Chapter 13 is a voluntary repayment program and that the most

serious problems simply result in the threat of a dismissal of a case and that that threat is usually withdrawn as soon as the problems are remedied.

He will explain how Chapter 13 debtors frequently fail to complete the plans. He will explain that 55 percent of debtors fail to fulfill the plan and that the Porteouses were in the minority in successfully completing and paying more to creditors.

None of these issues were explained to the House. Instead, the House impeached a judge on errors that did not materially affect his creditors, did not prevent him from completing his bankruptcy plan or paying creditors more than he had originally told. This would take the Senate from a standard citing such crimes of treason to the removal of a judge based on such things as a $200 discrepancy on a credit card.

Let's move to the last article. As with Article II, Article IV seeks Judge Porteous's removal on the basis of pre-federal conduct going back decades. This time under the guise of a failure to disclose such conduct during the confirmation.

The standard that the House seeks to

impose is, frankly, absurdly subjective. Did Judge Porteous failure to disclose information that he, Judge Porteous, thought would be embarrassing to President Clinton? Assuming Judge Porteous thought he had done nothing wrong or inappropriate, and that's what we're going to be presenting evidence about, he did not think it would be embarrassing to him or to President Clinton.

Even if the Senate comes to the conclusion that Judge Porteous acted improperly and should have put something of these floating allegations down, they can't conclude that he thought that these actions were improper and, therefore, embarrassing without concluding that Judge Porteous acted with the intent to deceive. There's no basis for that conclusion.

The evidence will show that allegations contained in this article are also completely and demonstrably untrue. I'm not saying challenged. I'm saying untrue. For example, the House specifically impeached Judge Porteous on the failure to mention a brief conversation he had with Louis Marcotte.

Now, you didn't hear this mentioned by the House Managers in their presentation, but boy, was

it mentioned before, but more importantly, it's in the article. Now, the House Managers have said that the judge should be impeached because he failed to mention this conversation when he filled out these forms, when he filled out the background form, for example.

The only problem, as we revealed after the House impeached this judge, the conversation occurred after the forms were filled out. It was impossible for him to put into these documents a conversation that hadn't occurred yet. Moreover, even if you believe that a judge, when someone like Marcotte comes to him and says I gave you a clean bill of health -- by the way, the most common thing that background witnesses tell nominees, I gave you a clean bill of health.

Even if you believe there's something wrong with him not immediately picking up the phone and saying I would like to submit a supplemental filing saying this guy just gave me a clean bill of health, even if you think that warrants an impeachment, it couldn't have happened in this case the way the article stated. Indeed, I believe this is the first impeachment that I know of where a fact contained in an article of impeachment simply did

not occur.

The embarrassment question, as you know as Senators, is universally answered in the negative by nominees, even though there are many cases where some embarrassing facts are, in fact, disclosed.

Testimony from experts will show you what the figures are like on this, what the cases are like, but nominees routinely omit financial, ethical, even criminal histories from their background reports, omissions that have occurred literally in dozens of high-profile cases that resulted in no action, no action taken against the nominees, including some cases where the embarrassing facts were revealed before confirmation and they were confirmed, revealed not by the nominee but they were confirmed.

Furthermore, the evidence will show that Judge Porteous's issuance of bonds and curatorships were in line with other judges. There's no reason he would say this is embarrassing because I did something that all of us in Gretna did, not because it was corrupt but because that was how it was done. It was not illegal.

Finally, we will show that the basic allegations contained in Article IV were known by

the FBI and the Senate committee before Judge Porteous's confirmation. This is precisely what the House's own experts warned could not be the basis for removal.

The pre-federal conduct referred by the House was known at the time of confirmation. We have put into the record proof of that. The House members were never told that before impeachment. Once again, this was never discussed or disclosed to the House.

We found new evidence before the Senate. Moreover, not only are curatorships and bonds matters of public record that Judge Porteous took no effort to conceal, they were, in fact, the same records and actions of all of the judges.

You will hear testimony from Professor Calvin Mackenzie, who is widely viewed not as a leader in this field, he's viewed as the leader in the field. He has numerous books on the confirmation process and background investigations. You will hear testimony of the failure to make disclosures is common on federal nominees with literally dozens of these cases.

As Senators, we admit we probably don't have to tell you this. You deal with it regularly.

You've seen countless such questionnaires. And I dare say I would be surprised if you know of many questionnaires where someone answered the embarrassment question in the negative. But Professor Mackenzie will come and show you dozens of cases where it was answered in the negative and, either before a successful confirmation or after, embarrassing things were disclosed, not just for judges but for justices.

If this could be the basis for removal, think about it. Congress could sit on a background questionnaire and simply remove a judge at will for failure to disclose. You just file these things and find things that you now think he should have thought was embarrassing and bring them up on the identical articles, Article IV. Literally dozens of judges could be removed on the same grounds, judges sitting today on the federal court.

In this case, the House wants you to remove a judge in a failure to disclose information that he did not consider relevant or embarrassing when those allegations were already known by the Senate and the FBI.

In closing, I will note that in only a couple of months of representing Judge Porteous,

we've been able to show fundamental errors, contradictions, and withheld evidence in this case. This is the peril of proceeding to impeachment without a prior criminal trial. That's why Congress has, in all modern impeachments, waited for a criminal trial.

Even if the trial, by the way, acquits the judge, that doesn't stop you from hearing the impeachment. What it does give you is a trial record. Indeed, late last night, we received new evidence, long-held by the Justice Department, literally hours before these proceedings began.

The record in this case continues to change not by the week, not by the day, but by the hour. I will only submit to you that impeachment trials should not be works in progress, the subject of casual or incomplete disclosures. It's more important than that.

Indeed, we don't believe today that we've received all of the material evidence in this case. Few Senators have been called upon to fulfill this unique role that you have under our Constitution. In the end, you have to decide whether Judge Porteous warrants the extraordinary action of removal for only the eighth time in the history of

this republic.

While the Fifth Circuit sent to Congress this case to consider, four judges took the trouble to write a 49-page opinion, warning you, speaking directly to you, that this case would eradicate core constitutional standards that have protected the independence of our court.

It should not occur, as some people seem to indicate, simply because everyone is dressed up for an impeachment and it would be a disappointment not to dispatch the accused. It should not occur, as the Managers suggest, because you've decided to downgrade the constitutional standard to a type of retroactive job interview.

The impeachment standard speaks to all judges. You don't have the option of saying well, it's close enough for jacks and just remove a judge on innuendo and conflicted facts. The House case is going to be exposed in this room for the first time through a fully adversarial process. Please give us a chance.

What remains after all of the half-truths and distortions melt away will dictate not just the future of this judge but the future standard for all judges. We ask only that you, like your

predecessors, mind the constitutional line. My colleagues and I are now ready to address these allegations.

We are now ready to present the case in defense of the United States District Court Judge G. Thomas Porteous, Jr.

Thank you very much.

CHAIRMAN MC CASKILL: Counsel, we will take a 15-minute break, and when we will come back, we will look for the first witness for the House.

(Recess.)

CHAIRMAN MC CASKILL: At this point the committee will call upon the House to call their first witness.

MR. SCHIFF: Madam Chair, the House calls Jake Amato.

CHAIRMAN MC CASKILL: Mr. Amato, would you please raise your right hand so the oath can be administered.

Whereupon,

JACOB J. AMATO, JR.

was called as a witness and, having first been duly sworn, was examined and testified as follows:

CHAIRMAN MC CASKILL: Mr. Amato, as you know, you have been granted immunity by the United